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*Counsel for Plaintiff Sean Gilbert DeVries  
and the Proposed Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SEAN GILBERT DEVRIES, *on behalf of  
himself and all others similarly situated,*

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC.,

Defendant.

Case No. 3:16-cv-02953-WHO

**PLAINTIFF DEVRIES' RESPONSE TO  
COURT'S MARCH 26, 2020 ORDER RE  
TAX REPORTING ISSUE (DKT. 112)**

As this Court correctly noted in its Order Re Tax Reporting Issue of March 26, 2020 (Dkt. 112) (“March 26, 2020 Order re Tax”), as an “equitable matter,” it “makes sense” for Sean Devries and Ronald Chinitz (“Plaintiffs”) to be taxed on “the amount they actually receive” and not on the attorneys’ fees and costs that Plaintiffs’ Counsel incurred in obtaining significant injunctive relief on behalf of the public. *Id.* at 1-2. Fortunately, there is a simple solution that allows Plaintiffs and Plaintiffs’ Counsel to be taxed on the amount they will actually receive and that ensures that Experian meets its tax reporting obligation with respect to its payment of the settlement proceeds. Namely, this Court can order that the settlement proceeds be paid pursuant to a qualified settlement fund (“QSF”). Given that the Parties already agree that the injunctive relief on behalf of the public must be so ordered by this Court, inclusion of a provision for a QSF in that order would be easy and straightforward. Alternatively, the QSF could be established by a separate order.

The QSF is a device commonly ordered by a court to be used for settlements that benefit large groups of persons, such as here. Once the QSF is set up according to the requirements of Section 468B of the Internal Revenue Code (“IRC”), a settling defendant need issue only one IRS Form 1099 for the full settlement amount to the QSF’s administrator, a role which Plaintiff Counsel Reese LLP hereby volunteers to fulfill. The obligation to issue additional Form 1099’s to any settling plaintiffs then would reside solely with the QSF administrator (instead of the Defendant). Plaintiffs hereby respectfully request that the Court approve the use of the Qualified Settlement Fund structure here.

Finally, we expect that Defendant would agree to such a Court order establishing a QSF here. Indeed, Defendant represented as much to the Court in its Memorandum in Response to the Court’s March 26, 2020 Order re Tax (Dkt. 114) (“Defendant’s Response”) where Defendant stated that “Experian wishes to cooperate and to find a mutually agreeable solution to this issue” and that “Experian is willing to make any and all concessions within the bounds of the law and its reporting obligations to finalize the parties’ settlement, and will comply with any order of the Court to that effect.” Defendant’s Response (Dkt. 114) at 1, 5.

1       **I. USE OF A QUALIFIED SETTLEMENT FUND IS PROPER HERE**

2           Through the use of a QSF, Defendant would need only issue one IRS Form 1099 to the QSF  
3 Administrator (versus the multiple Form 1099s required outside of the QSF context). The way that a  
4 QSF works is best explained by Example 9 of Section 6045-5 of the IRC:

5           **Example 9. Qualified settlement fund.**

6           Corporation P agrees to settle for \$300,000 a class action lawsuit brought by  
7 attorney A on behalf of a claimant class. Pursuant to the settlement  
8 agreement and a preliminary order of approval by a court, A establishes a  
9 bank account in the name of Q Settlement Fund, which is a qualified  
10 settlement fund (QSF) under § 1.468B-1. A is also designated by the court as  
11 the administrator of the QSF. Corporation P transfers \$300,000 by wire in  
12 Year 1 to A, who deposits the funds into the Q Settlement Fund. In Year 2,  
13 the court approves an award of attorney's fees of \$105,000 for A. In Year 2,  
14 Q Settlement Fund delivers \$105,000 to A. ***P is required to file an  
information return under paragraph (a) of this section with respect to A for  
Year 1 for the \$300,000 payment it made to A. The Q Settlement Fund is  
required to file an information return under section 6041(a) and § 1.468B-  
2(l)(2) with respect to A for Year 2 for the \$105,000 payment it made to A.***

15       26 C.F.R. § 1.6045-5(f), Ex. 9. Thus, Section 6045-5 of the IRC would allow for Defendant to (i)  
16 pay the full settlement amount to the QSF, (ii) issue only one Form 1099 to the QSF Administrator  
17 for the full amount, and (iii) fulfill its settlement payment without any further tax-reporting  
18 obligations.

19       Establishment of a QSF here addresses the inequity identified both by this Court in its March  
20 26, 2020 Order re Tax and the United States Supreme Court in *Commissioner v. Banks*, 543 U.S.  
21 426, 438-439 (2005). As stated by the Supreme Court in *Banks*, where a settlement is primarily  
22 injunctive relief, or when the attorneys' fees are statutorily awarded, attorney's fees often can exceed  
23 a plaintiff's monetary recovery. In such a situation, it would be unfair to treat the attorney's fees and  
24 costs as part of the income to the plaintiffs because "[t]reating the fee award as income to the  
25 plaintiff . . . can lead ***to the perverse result that plaintiff loses money by winning.***" *Id.* at 438  
26 (emphasis added). Furthermore, "it is urged that treating statutory fee awards as income to plaintiffs  
27 would undermine the effectiveness of fee-shifting statutes in deputizing plaintiffs and their lawyers  
28 to act as private attorneys general." *Banks*, 543 U.S. at 438-439. That "perverse situation" can be  
avoided here by this Court ordering the establishment of a QSF.

1 Creating a QSF in this case is straightforward. Section 468B of the IRC merely requires that  
 2 (i) it be established pursuant to a court order, (ii) to resolve contested or uncontested claims arising  
 3 out of a tort, breach of contract or violation of law, and (iii) the fund's assets are segregated from the  
 4 assets of the transferor and any related persons. 26 U.S. Code § 468B(d)(2). Moreover, numerous  
 5 courts, including courts in this District, have approved of the use of QSFs in the context of  
 6 settlements by payment of one lump sum, wherein the proceeds thereof are to be divided among  
 7 attorneys and plaintiffs. *Kress v. PricewaterhouseCoopers LLP*, Case No. 2:08-cv-00965, 2018 WL  
 8 1124212, at \*12-\*14 (E.D. Cal. Jan. 4, 2018); *In re Sony PS3 "Other OS" Litigation*, Case No.: 10-  
 9 cv-01811, 2017 WL 5598726, at \*15-\*23 (N.D. Cal. Nov. 21, 2017); *In re Korean Ramen Antitrust*  
 10 *Litig.*, No. C-13-04115-WHO, 2016 WL 8188743, at \*2 (N.D. Cal. Aug. 22, 2016).

11 IRC Section 468B's prongs two and three are readily met here because the parties' settlement  
 12 is intended to resolve claims asserted by Plaintiffs arising out of an alleged violation of law; and,  
 13 once paid into the QSF, the settlement amount will be segregated from the assets of Defendant and  
 14 any of its affiliates. Thus, all that is needed to use the QSF structure is an order from this Court (i)  
 15 approving the use of a QSF, (ii) ordering Plaintiff Counsel to establish an escrow account for receipt  
 16 of the settlement proceeds pursuant to IRC Section 468B, (iii) designating Reese LLP as the  
 17 administrator of said QSF, (iv) ordering Defendant to pay the full settlement payment to Reese LLP  
 18 as administrator of the QSF and (v) ordering Defendant to issue only one Form 1099 in the name of  
 19 Reese LLP as QSF administrator.

## 20 **II. CONCLUSION**

21 For the reasons stated above, Plaintiffs respectfully request that the Court approve the use of  
 22 the QSF structure pursuant to Sections 468 and 6045-5 of the IRC for the disbursement of settlement  
 23 proceeds and enter all necessary orders.

1 Dated: April 20, 2020

Respectfully submitted,

2 /s/ Carlos F. Ramirez

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21 *Attorneys for Plaintiff Sean Gilbert DeVries*

**CERTIFICATE OF SERVICE**

I, Michael R. Reese, hereby certify that on April 20, 2020, I caused electronic copies of the foregoing document to be served on counsel of record for Defendant in the above-captioned by filing said document on the Court's ECF system.

/s/ Michael R. Reese

Michael R. Reese